

EXECUTIVE SUMMARY OF SUNSET STAFF REPORT

Texas Ethics Commission

Project Manager: Senaida San Miguel

Full Report Here
sunset.texas.gov

With historic levels of money pouring into elections and few limits on campaign contributions and expenditures, disclosure of political activity is the state's primary tool for minimizing the risk of undue influence over elections and governmental actions. Created by constitutional amendment in 1991, the Texas Ethics Commission (TEC) administers the state's disclosure-based ethics system to promote and safeguard the public's trust in government. This system works by requiring candidates, officeholders, state officials, and lobbyists to periodically file reports that disclose their political — and in certain circumstances personal — financial activity, thereby shining a light on potential sources of influence for the public to see and judge. While the review found TEC to be generally well run, the agency faces many of the same problems it did 12 years ago. Because TEC's 2013 Sunset bill was vetoed and little ethics reform has occurred in the intervening years, complicated disclosure laws and atypical regulatory processes continue to burden filers and result in TEC being overly focused on enforcing against minor reporting errors rather than more serious ethical violations.

Statute focuses TEC on minor report errors rather than more serious ethical violations.

The state's disclosure laws contain numerous confusing requirements and layers upon layers of exemptions, making compliance challenging for the regulated community and enforcement difficult for the agency. While Sunset staff did not attempt to recommend a complete overhaul of the laws, the review identified several opportunities to streamline statute to ease the burden on filers and the agency itself while balancing the need for full public disclosure. Furthermore, recommendations for the agency to holistically evaluate and prioritize its IT projects and improvements to its electronic filing system would help filers better navigate complex disclosure requirements while giving TEC automated tools to improve the agency's efficiency.

In a contentious political climate, TEC's sworn complaint process remains a source of concern for both the agency and regulated community as the number of filed complaints continues to grow year after year. Recommendations to better distinguish the seriousness of reporting and other violations of the law would enable TEC to use its limited resources more efficiently and help the public understand whether an individual was engaged in serious, ethically questionable behavior or simply made an honest mistake. Furthermore, aligning

TEC's sworn complaint process with best practices in the state's Administrative Procedure Act and those of other regulatory agencies would minimize costs and promote procedural certainty for respondents while still providing them sufficient due process protections.

To further focus TEC's attention, Sunset staff also recommends restructuring the agency's audit function to be more effective and efficient. By streamlining the existing compliance or completeness check for filed reports and then requiring TEC to perform full audits of high-risk campaign finance and lobby activity reports, these recommendations would better equip the agency to concentrate on matters with the most potential to conceal undue influence or distort public disclosure. This structure would provide a more efficient approach to catching minor errors on the front end and giving filers an opportunity to correct them before a violation is found and would establish a more proactive means of ensuring the public has information that is accurate and truthful.

Finally, Sunset staff did identify issues related to TEC's independence from the political environment in which it operates, some of which the agency discussed in its *Self-Evaluation Report*. In many ways, TEC is designed to be insulated from politics — the agency is established in the constitution, its commission is required to be bipartisan with appointments from the legislative and executive branches, and key decisions require a supermajority vote of the commission. However, TEC is in the precarious position of having to regulate the same elected officials who are responsible for its funding, oversight, and unpaid penalty collections. Additionally, because campaign finance regulation intersects with constitutionally protected political free speech, TEC often finds itself at the center of legal battles challenging its authority to enforce the laws the Legislature enacted. However, restrictions in the state budget can prevent TEC from obtaining outside legal counsel when doing so may be appropriate to avoid potential conflicts of interest or obtain experts in constitutional matters for the best chance of success at defending the state's laws. While these political realities are important and impact TEC's ability to fulfill its purpose, they are the result of significant policy decisions outside the scope of Sunset staff's review.

As a constitutionally created agency, TEC is not subject to abolishment under the Sunset Act so this staff report does not address the agency's continuation. The following material highlights Sunset staff's key recommendations for the Texas Ethics Commission.

Sunset Staff Issues and Recommendations

ISSUE 1

Cumbersome Laws and Informal Management Practices Result in a Disclosure System that Limits TEC's Efficiency and Burdens the Regulated Community.

TEC's core function is to promote the meaningful disclosure of financial and political activity that voters rely on to hold public officials accountable. However, complicated, outdated, and unclear statute places unnecessary burdens on filers and hinders meaningful disclosure. For instance, statute requires TEC to annually update 74 distinct reporting and registration thresholds to account for inflation, resulting in unintuitive thresholds that filers must track to comply with the law. Simplifying, updating, and clarifying this and other statutes would make compliance easier for filers, improve disclosure, and save TEC time and money. Furthermore, several challenges, including budget restrictions and statutory changes requiring expensive modifications to TEC's electronic filing system, have prevented the agency from fully developing crucial IT tools to better facilitate disclosure and meet the expectations of filers and

the public. Having a more formalized plan for IT projects and improved IT contract monitoring would enable TEC to better use its limited resources to maintain an effective and efficient disclosure system.

Key Recommendations

- The House Appropriations and Senate Finance committees should consider providing TEC additional guidance regarding the use of unexpended funds for IT improvements.
- Require TEC to adjust reporting and registration thresholds every 10 years instead of annually.
- Remove prescriptive mailing requirements from statute.
- Direct TEC to develop a comprehensive plan for short- and long-term improvements to the agency's IT resources.

ISSUE 2

TEC's Regulatory Tools and Practices Hinder Its Compliance Efforts and Prevent the Agency from Prioritizing Serious Violations of State Ethics Laws.

TEC has several regulatory tools to help ensure prompt and accurate disclosure of political activity to enable the public to make informed judgments about the behavior of candidates and public officials. However, TEC's current regulatory framework provides insufficient guidance about the severity of violations, which can distort the public's perception of candidates and officials. Furthermore, TEC lacks clear statutory direction for its audit function, and other atypical enforcement processes limit the agency's effectiveness and efficiency. Clarifying statute and providing TEC additional authority would align its compliance efforts with best practices for regulatory agencies and allow TEC to focus its efforts on violations with the most potential to impact the public.

Key Recommendations

- Require TEC to categorize violations of law within its jurisdiction according to seriousness.
- Restructure TEC's audit function to better differentiate between facial compliance reviews and complete audits.
- Require TEC to prioritize complaint investigations based on risk to full and accurate disclosure.
- Authorize TEC to increase penalties for filers who repeatedly file reports late.
- Require filers to provide supporting records and documentation upon request by TEC.

ISSUE 3

TEC's Sworn Complaint Process Fails to Promote Efficiency and Weakens the Commission's Role in Enforcing Disclosure Laws.

TEC investigates alleged violations of laws under its jurisdiction through the sworn complaint process, which is comprised of several stages with opportunities for resolution or dismissal at each. While

TEC handles most sworn complaints efficiently, several atypical processes can waste the agency's and respondents' resources and prolong outcomes. Aligning TEC's sworn complaint processes with best practices for regulatory agencies would not only improve efficiency but also ensure the agency investigates and resolves complaints in a timely manner and that its considerable effort and decisions are not rendered moot when appealed to district court.

Key Recommendations

- Restructure the preliminary review hearing to involve only a subset of commission members.
- Require judicial review of commission decisions to be based on the substantial evidence rule.
- Require TEC to implement discovery control plans.

ISSUE 4

TEC's Statute and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

Certain TEC statutory provisions and processes do not align with standard Sunset review elements derived from direction traditionally provided by the Sunset Commission, statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or general law provisions imposed on state agencies. This review identified the need for continued legislative oversight of TEC and changes needed to conform TEC's statute to standard Sunset language generally applied to all state agencies under Sunset review. Additionally, TEC would benefit from a formalized rule review plan to ensure rules accurately reflect current law and agency practice.

Key Recommendations

- Amend TEC's Sunset review date to 2037.
- Update the standard across-the-board requirement related to commission member training.
- Direct TEC to adopt a rule review plan.

Fiscal Implication Summary

Overall, the recommendations in this report would result in a direct cost to the state of approximately \$190,000 per fiscal year. Other recommendations could result in costs or savings, but those impacts would depend on implementation and cannot be estimated at this time. Recommendations in Issue 1 authorizing TEC to use unexpended funds for IT improvements would result in a loss to general revenue of approximately \$203,000 per fiscal year that would be offset by savings of approximately \$14,000 per year from eliminating prescriptive mailing requirements. Recommendations in Issue 2 to restructure TEC's audit function and authorize the agency to assess higher penalties for repeatedly late filers may have a fiscal impact, but the extent of costs or increased revenue would depend on the implementation of the new audit function and the number of filers paying increased fines, respectively. Finally, recommendations in Issue 3 would create additional efficiencies and shorter resolution times for sworn complaints, which would achieve long-term savings.